

**United States of America and the State of Colorado v.  
The S.W. Shattuck Chemical Company, Inc.,  
CONSENT DECREE**

**APPENDIX A  
Redevelopment Trust Agreement**

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The following form of agreement comprises the Redevelopment Trust Agreement.

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**THE REDEVELOPMENT TRUST AGREEMENT**

The S.W. Shattuck Chemical Company, Inc. ("Grantor"), pursuant to the terms of the Consent Decree in United States of America and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., Civil Action No. \_\_\_\_\_, (D. Colorado)(the "Consent Decree"), as of this \_\_\_\_ day of \_\_\_\_\_, 2001, hereby declares Tom Connolly to be Trustee (the "Trustee"), and Tom Connolly agrees to act as Trustee and to hold and dispose of property transferred to the Trustee pursuant to the terms of the Consent Decree and all additions thereto in accordance with the terms of this Trust Agreement.

**ARTICLE I  
DEFINITIONS**

1.01 Capitalized Terms. For all purposes of this Trust, the following terms shall have the meanings set forth below:

"Authorized Representatives" shall mean those individuals or their designated successors who have the authority for all purposes of this Trust Agreement to take any action or give any approval required herein for any party or entity.

"Consent Decree" shall mean the Consent Decree in United States of America and the State of Colorado v. The S.W. Shattuck Chemical Company, Inc., Civil Action No. \_\_\_\_\_ (D. Colorado).

"Net Sales Proceeds" shall mean the proceeds of the sale of the Shattuck Property that the Redevelopment Trust receives from the sale of the Shattuck Property, net of any fees and expenses as set forth in Paragraphs 3.01(f) and (g) of this Redevelopment Trust Agreement.

“Trust Estate” shall mean all right, title and interest of the Trustee in and to the Trust Fund and the Trust Property as hereinafter defined, including without limitation any income or profits derived therefrom.

“Trust Fund” shall mean any and all personal property of this Trust, including without limitation funds and other liquid assets contributed by the Grantor, or any other person or entity and any interest or other income earned thereon, but shall not include any Trust Property as hereinafter defined.

“Trust Property” shall mean any and all real property contributed to this Trust, but does not include the proceeds of any sale or other disposition of such real property or any other personal property held by the Trustee.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“CDPHE” shall mean the Colorado Department of Public Health and Environment, and any successor departments, agencies, or instrumentalities of the State.

“Trustee” shall mean Tom Connolly or his successor, as the then serving trustee of the Trust.

1.02 Incorporation of Certain Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Consent Decree.

## **ARTICLE II**

### **NAME AND PURPOSE OF TRUST**

2.01 Name. This Trust shall be known as the Redevelopment Trust” (hereinafter sometimes referred to as the “Trust”).

2.02 Trust Purpose. The purpose of this Trust is to act for the benefit of the United States by: (i) receiving and holding title to the Shattuck Property until it is sold in accordance with the requirements of the Consent Decree; (ii) cooperating fully with EPA in the implementation of response actions at the Shattuck Property and not interfering with such response actions, and providing access to the Shattuck Property as set forth in Section XI of the Consent Decree; (iii) marketing the Shattuck Property for sale and redevelopment; (iv) maximizing the proceeds of the sale of the Shattuck Property; (v) transferring the Net Sale Proceeds from the sale of Shattuck Property and any residual corpus of the Redevelopment Trust following the sale of the Shattuck Property to the Denver Radium/OU VIII-Shattuck Special Account within the Hazardous Substance Superfund; and (vi) providing annual

accounting to EPA until the Shattuck Property is sold and thereafter providing a final accounting to the United States of all earnings, income, and disbursements from the Trust Estate.

### **ARTICLE III**

#### **DUTIES OF THE TRUSTEE**

3.01 Trust Property. The Trustee shall:

(a) Receive, hold, manage, and maintain Trust Property until it is sold and conveyed for value in accordance with the requirements of the Consent Decree;

(b) Exercise due care at the Trust Property with respect to Existing Contamination and comply with all applicable local, State, and federal law and regulations, and to cooperate fully with EPA in the implementation of response actions at the Shattuck Property and not interfere with such response actions, and provide access to the Shattuck Property as set forth in Section XI of the Consent Decree;

(c) Deposit, manage, and invest the funds paid into the Trust Fund, and disburse funds from such account(s) for the purposes set forth in the Consent Decree;

(d) Pay applicable real estate taxes and file applicable federal and state tax returns associated with the Trust and the sale of the Trust Property;

(e) To locate purchasers who will provide maximum value for, and will substantially reuse the Trust Property, consistent with applicable zoning and other valid land use ordinance and regulations and in consideration of the results of the redevelopment study conducted by the City and County of Denver and funded by a grant from EPA, and in consultation with EPA to negotiate the terms of the sale and transfer of the Trust Property and to sell and convey the Trust Property;

(f) Subject to approval of EPA, to retain a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale of Trust Property;

(g) Consistent with the fundamental purposes of the Trust as set forth above and other applicable requirements of the Consent Decree, and subject to the approval of EPA, to take whatever actions at whatever times are commercially reasonable to maximize the net proceeds of the sale of the Shattuck Property;

(h) To distribute the Trust Estate following the sale of the Shattuck Property in accordance with Sections 4.01 and 4.02;

(i) To provide EPA an accounting on an annual basis, and a final accounting within thirty (30) days after the sale or conveyance of the Trust Property, of all Trust Fund assets, earnings, and disbursements;

(j) Following the completion of the work implementing the remedial action for the Shattuck Property as set forth in EPA's June 16, 2000 ROD, to employ all reasonable measures to prevent unauthorized entry upon or use of the Trust Property in its possession or control and to provide for site maintenance and utilities, if any;

(k) To insure the Trust Property against loss due to casualty or third party liability; and

(l) To comply with all relevant Sections of the Consent Decree, and EPA shall have the right and power to compel the Trust to so comply.

3.02 Trust Fund. The Trustee shall apply all of the Trust Fund toward the duties prescribed by Section 3.01 for as long as the Trust Property remains in its possession.

3.03 Application for Tax Abatements. The Trustee shall make all necessary applications for abatements from property taxation and provide such additional information to the City and County of Denver ("Assessor") or other appropriate local or state taxing authorities as is necessary to assure that the assessed valuation of the Trust Property is fair and reasonable.

#### **ARTICLE IV**

##### **SALE OF TRUST PROPERTY, DISTRIBUTION OF NET SALES PROCEEDS AND TRUST FUND, AND TERMINATION OF TRUST**

4.01 Sale and Conveyance of Trust Property. The Trustee is authorized to sell and convey Shattuck Property to any person or entity (a "Successor in Property Interest") which, prior to or simultaneous with the sale and conveyance of the Shattuck Property: (i) certifies to EPA and CDPHE that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at or from the Shattuck Property; (ii) agrees to exercise due care at the Shattuck Property with respect to the Existing Contamination and comply with all applicable local, State, and federal laws and regulations; (iii) acknowledges that it recognizes that the implementation of response actions at the Shattuck Property may interfere with its use of the Shattuck Property, and may require closure of its operations or a part thereof; (iv) agrees to cooperate fully with EPA in the implementation of response actions at the Site and not to interfere with such response actions, provided that EPA, consistent with its responsibilities under applicable law, use reasonable efforts to minimize any interference with the Successor in Property Interest's operations by

such entry and response; (v) agrees that in the event the Successor in Property Interest becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Shattuck Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, to immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA and CDPHE of such release or threatened release; and (vi) agrees to the terms and conditions of the Consent Decree as set forth in Paragraph 21 and Sections X, XI, XIV, and XVI. To effect these certifications, representations, and agreements, the Trustee will require the Successor in Property Interest or its authorized corporate official or other representative to execute the Certification and Consent Agreement in the form attached to the Consent Decree as Appendix D and submit it to EPA.

4.02 Distribution of Trust Assets. Within fifteen (15) Days after the closing upon the sale of the Shattuck Property the Redevelopment Trust shall disburse: (a) to EPA's Denver Radium/OU VIII-Shattuck Special Account, the Net Sale Proceeds from the sale of the Shattuck Property to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund; and (b) to Grantor, the balance, if any, of the money paid by Grantor into the Redevelopment Trust, and all earnings thereon, less the fee of the Trustee of the Redevelopment Trust as set forth in Section 8.04 and any expenses of administering the Redevelopment Trust or maximizing the net proceeds of the sale of the Shattuck Property as authorized pursuant to the terms of this Redevelopment Trust Agreement or the Consent Decree.

4.03 Termination. At such time as all of the Trust Property has been sold and conveyed as provided in Section 4.01, the Trust Assets have been distributed in accordance with Section 4.02, a final accounting has been provided pursuant to Section 7.02, and the Trustee has complied with all of the relevant provisions of this Redevelopment Trust Agreement and the Consent Decree, this Trust shall terminate.

## **ARTICLE V**

### **RETENTION OF PROFESSIONAL AND OTHER SERVICES**

5.01 Accountants. The Trustee may employ an independent certified public accounting firm or individual to complete federal or state tax returns for this Trust (the "Accountants").

5.02 Retention and Removal of Other Professional and Employee Services. Subject to the approval of EPA, the Trustee may employ such attorneys, accountants, custodians, consultants, engineers, surveyors, contractors, clerks, investment counsel and agents or employees, and make such

payments therefor as the Trustee may deem necessary and commercially reasonable for the implementation of the purposes of this Trust.

## **ARTICLE VI**

### **TRUSTEE'S POWERS**

The Trustee shall have, in addition to those powers specified elsewhere herein and the general powers of the office, the following powers, which powers shall be exercised in a fiduciary capacity, in the best interest of this Trust and in the sole discretion of the Trustee unless otherwise specified:

6.01    Payment of Expenses of Administration. To incur and pay any and all customary and commercially reasonable charges, taxes and expenses upon or connected with this Trust in the discharge of its fiduciary obligations.

6.02    Retention of Property. To hold and retain all or any part of the Trust Property and the Trust Fund in the form in which the same may be at the time of the receipt by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03    Preservation of Principal. Notwithstanding any other provision in this Trust, to at all times hold, manage and invest the assets of the Trust Fund in a manner designed to preserve the principal of the Trust Fund and, consistent with preservation of the principal of the Trust Fund, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04    Investment of Trust Fund. To invest and reinvest all or any part of the Trust Fund (including any undistributed income therefrom) as the Trustee deems advisable, except that such investments shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, or bank accounts or certificates of deposit to the extent such are insured by the federal government. In all cases, however, the total investments must be sufficiently liquid to enable the Trustee to fulfill the purposes of this Trust and to satisfy obligations as they become due. Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Trust Fund or any part thereof as may be reasonably prudent pending use of the Trust Fund for the purposes of this Trust.

6.05    Management of Trust Estate. Without any business objective, and as may be incidental or advisable in connection with the purposes of this Trust as set forth in Section 2.02, to sell, exchange,

partition or otherwise dispose of all or any part of the Trust Fund at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as it shall determine.

6.06 Extension of Obligations and Negotiation of Claims. To renew or extend the time of payment of any obligations, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as the Trustee shall determine; and to adjust, settle, compromise, abandon, contest and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as it deems advisable.

6.07 Location of Assets. To hold any property belonging to the Trust at any place in the United States.

6.08 Authority to Represent Trust Before Agencies. To represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority that has authority or attempts to exercise authority over any matter that concerns this Trust, and to invoke the dispute resolution procedure pursuant to Section XV of the Consent Decree.

6.09 Powers Regarding Real Estate. Subject to the provisions of the Consent Decree and other provisions of this Trust, including without limitation any required approvals, the Trustee may retain all or any part of any real estate (or interest therein) that becomes part of the Trust Property (the “real estate”) for such period as the Trustee deems advisable and shall pay all taxes and assessments on the real estate, maintain it and insure it against risks in such amounts as the Trustee deems advisable and in such amounts as are approved by the EPA (which approval shall not be unreasonably withheld). In addition to all other powers conferred by law or other provisions of this Trust, and also subject to the provisions of the Consent Decree and the other provisions of this Trust, the Trustee shall have the following powers, which may be exercised without court approval:

(a) To grant options and make other contracts concerning the real estate (whether or not extending beyond the term of any trust);

(b) To subdivide the real estate and dedicate streets or other ways for public use;

(c) To impose easements or other restrictions;

(d) To establish reserves for depreciation, taxes, insurance or other purposes as the Trustee deems advisable;

(e) To execute and deliver all appropriate instruments;

(f) To record in the Clerk and Records's Office for the City and County of Denver, Colorado, any instrument, including any certificate acknowledged by the Trustee as to any fact concerning the real estate; and any person without actual knowledge to the contrary may rely conclusively on the genuineness of any such instrument and on the correctness of any such certificate.

No person dealing with the real estate shall be required to see to the application of any money or property delivered to the Trustee, or to see that the terms and conditions of this Trust have been complied with. Every instrument executed or action taken by the person or entity appearing to be the Trustee shall be conclusive evidence that this Trust was in full force and effect when the instrument was delivered or the action was taken; that such person or entity was the Trustee; and that such instrument or action was valid and legally binding.

6.10 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers until such time as the entire principal of, and income from, the Trust Fund has been actually distributed by the Trustee and all Trust Property has been sold or otherwise disposed of.

6.11 Reliance of Purchasers and Others. No license of court shall be requisite to the validity of any transaction entered into by the Trustee. No purchaser, transferee, or lender shall be under any obligation to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, deed, or other instrument or document executed or action taken by the Trustee or any successor or additional Trustee, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect and that such instrument or document or action is valid, binding and legally enforceable. Any person dealing with the Trust Estate or the Trustee may always rely without inquiry on a certificate signed as aforesaid as to who is the Trustee or Trustees or the beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the Trustee or that are in any other manner germane to the affairs of the Trust.

## **ARTICLE VII**

### **ACCOUNTS**

7.01 Annual Accounting. Trustee shall provide an accounting of all assets, income, earnings, and disbursements of assets of Trust Fund assets or Trust Property to EPA on an annual basis within forty-five (45) days after the end the calendar year.



7.02. Final Accounting. Trustee shall provide a final accounting, with copies of a closing binder including all documents pertaining to the sale or conveyance of all Trust Property, withing thirty (30) days after the closing upon such sale or conveyance.

## **ARTICLE VIII**

### **CONDITIONS OF TRUSTEE'S OBLIGATIONS**

The Trustee accepts the Trust imposed upon it but only upon and subject to the following express terms and conditions:

8.01 Limitation of Liability. In no event shall the Trustee be liable except for its negligence, gross negligence or willful acts or omissions in relation to its duties hereunder.

8.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Trust upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.03 Right to Demand Documentation. Notwithstanding anything else in this Trust, in the administration of the Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

8.04 Trustee's Compensation. The Trustee shall be compensated for its services hereunder in accordance with Exhibit A attached hereto.

8.05 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Trust, which in the judgment of the Trustee may reasonably conflict with any rule of law or with the terms of this Trust.

**ARTICLE XX**  
**SUCCESSOR TRUSTEES**

9.01 Resignation of Trustee. Any Trustee may resign by giving not less than sixty (60) days written notice to EPA, and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment by a successor Trustee. If any individual Trustee becomes mentally or physically unable to serve, a certificate so stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If any Trustee shall be dissolved or in the course of dissolution or liquidation, or otherwise unable to continue to act as Trustee, as finally determined by the EPA, a certificate so stating from the EPA shall constitute such Trustee's resignation. The Trustee's resignation shall be recorded as provided in this Trust Agreement immediately prior to the recording of the successor Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

9.02 Removal of Trustee. The Trustee may be removed by written request of EPA only for good cause, such as the failure to faithfully perform any of the duties and responsibilities required under this Trust Agreement or to comply with any of the terms or conditions of the Consent Decree. Disputes shall be resolved by the United States to the United States District Court for the District of Colorado.

9.03 Appointment of Successor Trustee. If Tom Connolly or any successor Trustee ceases to serve as Trustee, a successor trustee may be appointed by the EPA by an instrument in writing, signed by their Authorized Representatives, and delivered to the successor Trustee. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within 60 days after vacancy shall have occurred, any interested person (including the United States or EPA) and/or any retiring Trustee may apply to the court with continuing jurisdiction as provided in Section 10.03 hereof for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee. Each successor Trustee shall qualify upon written acceptance attached hereto and recorded as provided in this Trust Agreement and thereafter shall have the same powers, immunities and discretions as the original Trustee.

9.04 Transfer to Successor Trustee. Upon any successor Trustee's qualification, as provided in Section 9.02, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all

reasonable, customary and legally accrued fees, advances and expenses of any such predecessor Trustee shall be paid in full.

## **ARTICLE X**

### **MISCELLANEOUS**

10.01 Particular Words. Any word contained in the text of this Trust shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word “person” shall be taken to mean and include an individual, partnership, association, company or corporation.

10.02 Severability of Provisions. If any provision of this Trust or its application to any person or entity or in any circumstances shall be held to be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Trust shall not be affected by such invalidity or unenforceability.

10.03 Governing Jurisdiction. This Trust shall be enforceable in the United States District Court for the District of Colorado, which has continuing jurisdiction of the Consent Decree. The validity, interpretation and performance of this Trust shall be governed by the laws of the State of Colorado.

10.04 Modification. This Trust may be modified only by the consent of EPA and by order of the United States District Court for the District of Colorado, and only to the extent that such modification does not change or inhibit the purpose of this Trust as set forth in Section 2.02 or allow for distributions to any entity that is not a qualified organization as defined in Section 4.02.

10.05 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.

10.06 Authorized Representatives. The following are the Authorized Representatives of the Trustee and EPA:.

Trustee:

Name  
Address  
(phone and fax numbers)

EPA:

Name

Address

(phone and fax numbers)

IN WITNESS WHEREOF, \_\_\_\_\_, by its duly authorized officer, hereby sets its hand and seal as Grantor and \_\_\_\_\_, hereby sets its hand and seal as Trustee as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[ADD SIGNATURE BLOCKS FOR GRANTOR AND TRUSTEE]**